Supreme Court, U.S.
FILED

No. 03 . 912 DEC 22 2003

In the Supreme Court of the United States

PAUL KNOX,

Petitioner,

v.

DEBORAH SMITH,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an arrest warrant may issue on less than probable cause for the custodial arrest of a parolee, despite the fact that the Fourth Amendment requires that "no Warrants shall issue, but upon probable cause."

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner James Knox is an individual and a citizen of the United States residing in Illinois. Petitioner does not have any corporate affiliations.

Respondent

Respondent Deborah Smith is an individual and a citizen of the United States residing in Illinois. Petitioner is unaware of any corporate affiliations of Respondent Deborah Smith.

TABLE OF CONTENTS

Question Presented i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional Provision Involved 1

Statement of Facts 2

Reasons for Granting the Petition 4

Conclusion 10

Appendix

Appendix A - Seventh Circuit Order Denying Rehearing - 09/22/03 . . . . . 1a

Appendix B - Seventh Circuit Opinion - 08/26/03 . . 3a

Appendix C - District Court Memorandum Opinion and Order - 11/26/02 . . . . . 19a

Appendix D - Parole Agreements 40a

TABLE OF AUTHORITIES

Cases:

Atwater v. City of Lago Vista, 532 U.S. 318 (2001) . . . 7

Beck v. State of Ohio, 379 U.S. 89 (1969) 5

Camara v. Municipal Court, 387 U.S. 523 (1967) 9

Carroll v. U.S., 267 U.S. 132 (1925) 6

Dunaway v. New York, 442 U.S. 200 (1979) 7

Gerstein v. Pugh, 420 U.S. 103 (1975) 5

Hayes v. Florida, 470 U.S. 811 (1985) 7

Henry v. U. S., 361 U.S. 98 (1959) 5

Kaupp v. Texas, 538 U.S. 626 (2003) 5

Mallory v. U. S., 354 U.S. 449 (1957) 6

Michigan v. DeFillippo, 443 U.S. 31 (1979) 6

Michigan v. Summers, 452 U.S. 692 (1981) 6, 9

Michigan Dept. of State Police v. Sitz,
496 U.S. 444 (1990) 9

Morrissey v. Brewer, 408 U.S. 471 (1972) 7

New Jersey v. T.L.O., 469 U.S. 325 (1985) 9

O'Connor v. Ortega, 480 U S. 709 (1987) 9

Papachristou v. City of Jacksonville,
405 U.S. 156 (1972) 6

Payton v. New York, 445 U.S. 573 (1980) 5, 7

Pennsylvania v. Labron, 518 U.S. 938 (1996) 9

Tennessee v. Garner, 471 U.S. 1 (1985) 5

Terry v. Ohio, 392 U.S. 1 (1968) 7, 9

United States v. Harris, 403 U.S. 573 (1971) 5

United States v. Knights, 534 U.S. 112 (2001) 8

United States. v. MacDonald, 456 U.S. 1 (1982) 5

United States v. Marion, 404 U.S. 307 (1971) 5, 6

United States v. Place, 462 U.S. 696 (1983) 9

Wong Sun v. U.S., 371 U.S. 471 (1963) 5

Constitution and Statutes:

U.S. Const.Amend. IV . . . . . *passim*

28 U.S.C. § 1254(1) 1
28 U.S.C. § 1331 1
28 U.S.C. § 1343 1
42 U.S.C. § 1983 (1994 & Supp. IV 1998) 2

Paul Knox respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. B at 3a) is reported at 342 F.3d 651. The opinion of the court of appeals denying rehearing and rehearing *en banc* is reported at App. A at 1a.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2003. A petition for rehearing and rehearing *en banc* was denied on September 22, 2003.(App. A at 1a). Mr. Knox invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

The basis for jurisdiction of this action in the first instance is 28 U.S.C. §§ 1331 and 1343.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF FACTS

Paul Knox was placed under full custodial arrest pursuant to a warrant that issued on less than probable cause. At the time of this arrest, Mr. Knox was on parole from a sentence imposed by Illinois. The Seventh Circuit Court of Appeals explicitly held that Mr. Knox's arrest was constitutional because "the seizure of a parolee requires something less than probable cause." App. B at 13a. This is a novel proposition of law that is directly inconsistent with both the explicit language of the Fourth Amendment and the longstanding rule that a custodial arrest must be based on probable cause. The Seventh Circuit cited no authority justifying its failure to enforce the explicit language of the warrant clause of the Fourth Amendment.

The Seventh Circuit heard this mater on interlocutory appeal. App. B at 4a. Mr. Knox brought the underlying § 1983 action alleging that his right to be free from unreasonable seizures under the Fourth Amendment, as incorporated against the states by the Fourteenth Amendment, was violated by his arrest. *Id.* The district court held that Mr. Knox's parole officer, Respondent Deborah Smith[1] was not entitled, at the summary judgment stage, to a grant of qualified immunity for her role in procuring a warrant for Mr. Knox's arrest on June 22, 1999. App. C at 38a. According to the district court, the warrant for Mr. Knox's arrest was unreasonable and not based on "sufficient cause;" for this reason, a triable issue of fact existed as to whether Mr. Knox's arrest violated his constitutional rights. (App. C at 36a, 38a).

[1] Mr. Knox's original complaint included claims against several other defendants, most of whom were dismissed by a series of District Court orders in 2001 and 2002 or dropped voluntarily by Mr. Knox. App. C at 19a-21a, 38a.

Therefore, this case presents the straight forward question of whether the plain language of the constitution forbids the issuance of an arrest warrant based on reasonable suspicion.

Because this writ concerns a precise constitutional question of the meaning of the explicit language of the Fourth Amendment, the facts may be stated briefly. In March 1999, Mr. Knox was serving a one-year prison sentence for drug possession in Illinois. App. B at 4a. In April of 1999, Mr. Knox was paroled.[2] As a condition of his parole, Mr. Knox was required to follow the instructions of his parole officer, to report to a "host site," a post-incarceration residence, in this case a separate apartment in a home where his brother resided. App. B at 5a. In addition, he was required to submit to supervision by an electronic reporting system. *Id.* Smith instructed Mr. Knox to remain at the host site and to report his whereabouts to her at periodic intervals. App. B at 6a.

Mr. Knox was not required, as a condition of his parole, to sign a waiver of his constitutional right to be free from unreasonable searches or seizures, and no such waiver was signed. App. D at 40a-47a. Indeed, the parole agreements he was given upon release explicitly state that, "[u]ntil final discharge, you shall at all times be under the legal custody of the department of corrections, subject to being retaken at any time, *with the establishment of probable cause and with the lodging of a warrant*." App. D at 45a. (emphasis added) He was simply asked to sign a copy of certain home detention rules and reporting instructions. App. D at 40a-47a. There is no question in this case, in other words, of a waiver or

[2] Mr. Knox was arrested for violation of this parole in April, 1999, and paroled again the following May. That arrest is not at issue in this appeal. App. B at 4a.

forfeiture by Mr. Knox of his explicit Fourth Amendment protections.

The Seventh Circuit found that Smith had "reasonable suspicion" to procure Mr. Knox's warrant based on information she received that Mr. Knox was not at his host site. App. B at 17a-18a. Several routine calls made by the service provider of the electronic home monitoring system to a telephone in the other apartment at Mr. Knox's "host site" were answered by an unidentified man who stated that Mr. Knox was not at home. App. B at 9a, 17a. This tip from an unidentified man, coupled with the condition of Mr. Knox's parole that required him to be at home, gave rise, according to the Seventh Circuit, to a "reasonable suspicion to believe that Mr. Knox had left his host site in violation of the conditions of his parole." App. B at 17a-18a.

An arrest warrant issued for Mr. Knox's arrest and he was arrested pursuant to the warrant. App. B at 9a. Little more than a month later, the Illinois Prisoner Review Board ruled that Mr. Knox had not, in fact, violated the conditions of his parole and set him back out on parole. App. B at 9a-10a; App. C at 25a-26a.

REASONS FOR GRANTING THE PETITION

The Fourth Amendment is crystal clear that "no Warrants shall issue, but upon probable cause." This Court's cases applying this language are unwavering in requiring, without exception, that a full custodial arrest must be based on probable cause, and this Court has even applied this command in those cases where an arrest was made without a warrant. This case merits review in order to reverse the Seventh Circuit Court of Appeals' disregard of the text of the Fourth Amendment and this Court's precedent.

No theoretical exegesis of the meaning of the warrant clause of the Fourth Amendment is necessary because its meaning is obvious — no warrant shall issue but upon probable cause. This Court has applied this obvious meaning in an unbroken line of cases. *See, e.g. Kaupp v. Texas*, 538 U.S. 626, 629 (2003) ("the traditional rule [is] that arrests may constitutionally be made only on probable cause ... we have never sustained against Fourth Amendment challenge the involuntary removal of a suspect from his home...absent probable cause or judicial authorization"); *Payton v. New York*, 445 U.S. 573, 585 (1980) ("the simple language of the Fourth Amendment applies equally to seizures of persons and to seizures of property"); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) ("the standard for arrest is probable cause....[t]his standard...represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime"); *United States v. Harris*, 403 U.S. 573, 584 (1971) ("the issue in warrant proceedings is...probable cause for believing the occurrence of a crime"); *United States v. Marion*, 404 U.S. 307, 320 (1971) ("To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime"); *Beck v. State of Ohio*, 379 U.S. 89, 96 (1969); *Wong Sun v. U.S.*, 371 U.S. 471, 479 (1963) ("It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion"); *Henry v. U. S.*, 361 U.S. 98, 170 (1959).[3]

[3] *See also: Tennessee v. Garner*, 471 U.S. 1, 7 (1985) ("A police officer may arrest a person if he has probable cause to believe that person committed a crime."); *United States. v. MacDonald*, 456 U.S. 1, 8 (1982) ("To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime."); *Michigan v. Summers*, 452 U.S. 692, 700 (1981) ("...every arrest, and every seizure having the essential attributes of a formal arrest, is unreasonable unless it is supported by probable cause"); *Michigan v. DeFillippo*, 443 U.S. 31, 36

Petitioner could provide almost an endless line of citations for precisely the proposition that the Seventh Circuit ignored: The "Constitution prescribes, in other words, that where the matter is of such a nature as to require a judicial warrant, it is also of such a nature as to require probable cause." *Griffin v. United States*, 483 U.S. 868, 877-879 (1987) (quoting *Frank v. Maryland*, 359 U.S. 360, 373 (1959). It "remains true that if a search warrant be constitutionally required, the requirement cannot be flexibly interpreted to dispense with the rigorous constitutional restriction for its issue." *Id.*

The Seventh Circuit's approval of a custodial arrest on reasonable suspicion is simply out of step with this Court's Fourth Amendment jurisprudence. There is literally no support in the cases this Court has decided concerning

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(1979) ("It is not disputed that the Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense."); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 169 (1972) ("We allow our police to make arrests only on 'probable cause,' a Fourth and Fourteenth Amendment standard applicable to the States as well as to the Federal Government. Arresting a person on suspicion, like arresting a person for investigation, is foreign to our system, even when the arrest is for past criminality."); *United States. v. Marion*, 404 U.S. 307, 320 (1971) ("To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."); *Mallory v. U.S.*, 354 U.S. 449, 454 (1957) ("The police may not arrest upon mere suspicion but only on 'probable cause.'"); *Carroll v. U.S.*, 267 U.S. 132, 161 (1925) (noting the "necessity for probable cause...in making arrests without warrant for past felonies").

warrants or arrests for the proposition than an arrest warrant may issue on reasonable suspicion or even that a warrantless arrest may be made on less than probable cause.[4]

Although a limited class of seizures may be justified on less than probable cause, *see, e.g., Terry v. Ohio*, 392 U.S. 1, 20 (1968) ("if this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether 'probable cause' existed to justify the search and seizure which took place"), this Court has never "sustained against Fourth Amendment challenge the involuntary removal of a suspect from his home to a police station and his detention there for investigative purposes ... absent probable cause or judicial authorization." *Hayes v. Florida*, 470 U.S. 811, 815 (1985); *Payton,* 445 U.S. 589-590 (1980). The "standard of probable cause applie[s] to all arrests, without the need to 'balance' the interests and circumstances involved in particular situations." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (quoting *Dunaway v. New York*, 442 U.S. 200, 208 (1979)).

The Seventh Circuit ignored this impressive body of precedent in favor of a case dealing with a *warrantless search* of a probationer's home, *United States v. Knights*, 534 U.S.

[4] The Seventh Circuit also cited *Morrissey v. Brewer*, 408 U.S. 471 (1972) for the proposition, "[r]evocation [of parole] deprives an individual, not of the absolute liberty to which every citizen is entitled but only of the conditional liberty properly dependent on observance of special parole restrictions." *Id.* at 480. *Morrissey*, of course, applied due process protections to parolees, a seperate issue from the application of the text of the warrant clause to parolees. Significantly, *Morrissey* states, "The liberty of a parolee, although, indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others." *Id.* at 482.

112 (2001). In *Knights*, this Court adopted a balancing test as the touchstone for determining if Knights, the probationer involved, could have his home searched based on reasonable suspicion, stating "[w]e hold that the balance of...considerations requires no more than a reasonable suspicion to conduct a search of this probationer's house." *Id.* at 121. Two critical factors stood out in the balance struck, the government's need to supervise probationers, and the fact that Knights consented to a warrantless search of his home, for any reason, as a condition of his parole. *Id.*

Bright legal and factual lines distinguish the *Knights* decision from Mr. Knox's case. As a legal matter, this case deals with an arrest warrant; at issue in *Knights* was a warrantless search, a different beast. This Court has held that numerous searches are governed by the reasonableness clause of the Fourth Amendment, but it has never held that a full custodial arrest may be reasonable in the absence of probable cause.

Moreover, Knox did not sign, and was not asked to sign, a waiver of his right to be free from unreasonable searches, as did Knights. In fact, he was informed by his parole agreements that he would be arrested only on probable cause. App. D at 45a. Thus, there is no basis for assuming that Knox lived under a diminished expectation of privacy as there was in *Knights*. Hence, "[t]he probation condition" this Court noted as part of its reasoning in *Knights*, which "significantly diminished Knights' reasonable expectation of privacy," 534 U.S. at 119-120, is simply absent from this case.

In a limited set of instances, such as special law enforcement needs, diminished expectations of privacy or minimal intrusions, the Court has found that certain

circumstances may render a *warrantless* search or *temporary* seizure reasonable. *See, e.g., Pennsylvania v. Labron*, 518 U.S. 938, 940-41 (1996) (per curiam) (warrantless search of automobile supported by probable cause); *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 455 (1990) (suspicionless stops at drunk driver checkpoint); *United States v. Place*, 462 U.S. 696 (1983) (temporary seizure of luggage based on reasonable suspicion); *Michigan v. Summers*, 452 U.S. 692, 702-705 (1981) (temporary detention of suspect without arrest warrant to prevent flight and protect officers while executing search warrant); *Terry*, 392 U.S. at 27. The Court has not upheld a "special needs" full custodial arrest, however.

Furthermore, the essential character of the special needs cases distinguishes them from this case. Special needs searches and seizures receive constitutional blessing because they proceed according to a regulatory or administrative regime that guides the discretion of the government. *See e.g.*, *Griffin*, 483 U.S. at 875 ("[i]n determining whether the 'special needs' of its probation system justify Wisconsin's search regulation, we must take that regulation as it has been interpreted by state corrections officials and state courts."), *see also New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985); *O'Connor v. Ortega*, 480 U.S. 709, 725 (1987); *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967). The Seventh Circuit did not base its holding, in any respect, on a regulatory or administrative regime that might guide the acts of Smith, nor could it, Knox was arrested pursuant to a judicial warrant based on *individualized* suspicion.

The warrant for Mr. Knox's arrest should not have issued except on probable cause. By ignoring the basic conceptual categories of this Court's Fourth Amendment jurisprudence, the Seventh Circuit's opinion converts the entire Fourth Amendment, not just the reasonableness clause, into one large

Rorschach test. No categories would have meaning and everything would be judged by judicial findings of reasonableness. The Fourth Amendment explicitly requires the contrary. Whatever may be said of reasonableness under the Fourth Amendment, a warrant requires probable cause. Because of the Seventh Circuit's disregard of this plain and unambiguous constitutional requirement, this Court should grant the writ.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that its Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 02-4329

[Filed September 22, 2003]

PAUL KNOX,
Plaintiff-Appellee,

v.

DEBORAH SMITH,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 00 C 4825
Milton I. Shadur, Judge

Before Hon. KENNETH F. RIPPLE, Circuit Judge, Hon. MICHAEL S. KANNE, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge.

ORDER

On consideration of the petition for rehearing and suggestion of rehearing *en banc,* no judge in active service has requested a vote on the petition for rehearing *en banc*[1] and a majority of the judges on the original panel have voted to deny rehearing.

It is, therefore, ORDERED that rehearing and rehearing *en banc* are DENIED.

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[1] Chief Judge Joel M. Flaum did not participate in the consideration of this petition.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 02-4329

[Filed August 26, 2003]

PAUL KNOX,)
Plaintiff-Appellee,)
)
v.)
)
DEBORAH SMITH,)
Defendant-Appellant.)
)

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 00 C 4825
Milton I. Shadur, Judge

Before RIPPLE, KANNE, and DIANE P. WOOD, Circuit Judges.

OPINION

KANNE, *Circuit Judge*.

During the spring of 1999, Paul Knox was arrested twice, once in April and once in May, for violating the terms of his mandatory supervised release (MSR) agreement with the Illinois Prisoner Review Board. Knox filed this suit against his parole officer, Deborah Smith,[2] under 42 U.S.C. § 1983, alleging that both arrests violated his constitutional right to be free from unreasonable seizures. Smith moved for summary judgment on both claims on grounds of qualified immunity. The district court granted Smith's summary judgment on the claim arising from the April arrest, but not on the claim arising from the May arrest. Smith appeals the denial of summary judgment on the May claim and we reverse.

I. History

Paul Knox has spent much of the last twenty years in and out of the Illinois prison system for offenses including attempted murder, rape, and armed robbery. In March 1999, he was serving a one-year sentence for drug possession, when arrangements were made to place him on MSR. As part of his MSR, Knox was required to have electronic home monitoring and intensive supervision, so he was placed under the supervision of the Cook County Special Intensive Supervision Unit, which monitors electronic-detention residents.

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[2] The lawsuit named several other defendants, including numerous state officials, but only Deborah Smith remains in the suit; the others either having been granted summary judgment or having been dropped from the suit by Knox.

According to the March arrangements, Knox would be on electronic home detention and would reside at a "host site" with his brother, Milan, who agreed to allow Knox to live on one side of his duplex. Milan also agreed to have a separate phone line installed for electronic home monitoring of Knox by Automated Management Systems (AMS), a service provider that monitors, records, and documents a parolee's activities and pages parole agents about problems with parolees.[3]

Before he was initially released, Knox signed an MSR agreement with the Illinois Prisoner Review Board, which required him, among other things, to comply with the instructions of his parole officer, including any instructions to submit to electronic home monitoring. Knox was also given a copy of the Electronic Home Detention Rules, but, in an apparent attempt to avoid home detention, he refused to sign them. He also received an Illinois Sex Offender Registration Act Notification Form, which stated that based on his earlier rape conviction, he must register as a sex offender. He did not sign this form either. Finally, Knox signed reporting instructions, which required him to go directly to his host site upon release and call AMS when he arrived.

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[3] Electronic home detention requires that a parolee remain within the property boundaries of the host site during the times specified. Typically, a parolee's whereabouts are monitored by attaching an ankle bracelet to the parolee's leg and installing a monitoring box on the parolee's telephone. The monitoring box sends out periodic electronic beams that will detect if the ankle bracelet is on the premises. If the parolee is not on the premises (or if the parolee attempts to remove the bracelet) a signal is sent to the monitoring box on the telephone and a call is placed to AMS documenting the parolee's absence.

Knox was released on April 2 and problems soon ensued. Deborah Smith, the parole officer assigned to Knox, was paged by AMS on April 2 after Knox had not called to report in and repeated phone calls to Knox's host site had gone unanswered.[4] When Smith went to the host site to check the problem, she found Knox and Milan arguing about Knox living there, and she discovered that the portion of the duplex in which Knox would be living did not have a telephone.

Because Knox did not have access to a telephone and Milan would not permit Knox to use his phone, Smith instructed Knox to call AMS every two hours from a nearby pay phone using a toll-free number until something else could be worked out. She also told Knox that, except when making calls to AMS, he was to stay at home until electronic monitoring equipment could be installed. Smith also instructed Knox that he had to register as a sex offender. Smith later called AMS to report the situation at Knox's host site and to document the instructions she had given him.

The next day Knox failed to call in and several verification calls made by AMS went unanswered. AMS paged Smith and informed her of Knox's apparent absence and failure to report. Based on these failures and the fact that Knox had not registered as a sex offender, Smith requested

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[4] When a parolee on electronic home detention has been released but monitoring equipment has not yet been installed at his host site, an AMS operator makes random voice verification calls to ensure that the releasee has not absconded. It appears that during all times relevant to this appeal, since Knox did not have his own phone line, these voice verification calls were made to a telephone in the portion of the duplex occupied by Milan and Knox's mother.

her supervisor to issue a warrant for Knox's arrest.[5] Within minutes a warrant was issued for Knox as "AWOL" (absent without leave). The warrant was executed on April 9, and Knox was returned to custody. On April 23, a violation report, signed by Smith, was submitted to the Prisoner Review Board. The Prisoner Review Board held a hearing on May 11 and determined that Knox had violated his MSR. Nonetheless, the Board ordered that he be re-released by May 30.

Following the hearing, arrangements were again made to place Knox on MSR under the same terms as before. On May 26, he signed another MSR agreement, and he signed reporting instructions similar to those he had previously received. Also, as before, he was required to submit to electronic home monitoring as a condition of his MSR. He was given a copy of the Electronic Home Monitoring Rules, which he again refused to sign. This time, however, the rules sheet was signed by two witnesses, who certified that Knox was placed on parole with home detention as a condition and that in light of his refusal to sign the instructions, the rules were explained to and, to the best of the witnesses' knowledge, understood by Knox. Deborah Smith was once again assigned to be Knox's parole agent.

Knox was re-released on May 28, and after arriving at his host site, again his brother's duplex, Knox called AMS around 10:45 p.m. to report his arrival. According to Knox's amended complaint, during this call he was told to stay at

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[5] Smith's supervisor, Melvin Walker, had the task of enforcing MSR agreements. He had the authority to issue a warrant for any violation of an MSR, and he had to approve any arrest warrant requested by Smith.

home until the electronic monitoring equipment had been installed and an ankle bracelet had been placed on him. AMS made several verification calls later that night, again to the phone in Milan's portion of the duplex, all of which went unanswered.

At about 7:00 a.m., May 29, a technician arrived at the duplex to install the electronic monitoring equipment. The technician, however, was turned away by Knox's mother, who informed him that Knox did not live in that part of the duplex and did not have access to the telephone. The technician called AMS to report the problem.

Smith testified in a deposition that she visited Knox's host site on May 29 but Knox was not there. She claims that Milan informed her that Knox was at his girlfriend's house, so Smith drove there, picked Knox up, and returned him to the host site. Once there, Smith claims that she explained to Knox that he would have to be placed on electronic monitoring equipment, and that until the equipment could be installed, or until an alternative host site could be found, he was to remain in his house and call AMS every two hours, just as he had been instructed to do in April. Once again Milan objected to the installation of the monitoring equipment. In his deposition, Knox gave rather confused testimony about whether Smith visited and what she instructed him to do, testifying at one point in accord with Smith's account—that she had visited and had informed him to call AMS every two hours—but at another point testifying that he was instructed by someone to check-in by reporting to the parole office in person once a week. Near the end of his deposition, however, Knox again testified that Smith had indeed visited him on May 29 and given him instructions to call every two hours. The AMS report for May 29 shows no record of Smith's alleged visit or her instructions to call in every two hours. Smith

testified at various points in her deposition that it was her practice to report any contact with releasees to AMS.

The AMS records, however, do show that several verification calls were made to the duplex in the morning and early afternoon of May 29. At 8:54 a.m., an AMS verification call was answered by an unidentified man (presumably Knox's brother) who rudely stated that he did not want to be called and that Knox was next door. About an hour later, AMS made another call that was answered by an unidentified man who stated that Knox was at the other side of the house and that AMS had called the wrong number. AMS called the host site again at 11:53 a.m. The man who answered stated that Knox was in another part of the house and that AMS should call back in five minutes. AMS called back a little more than an hour later at 1:00 p.m. This time the man who answered the phone rudely informed AMS that he did not know where Knox was. AMS immediately paged Smith with the information, and at 1:15 p.m. she responded by paging her supervisor with a request for a warrant for AWOL. At 2:08 p.m. Smith's supervisor informed AMS that a warrant would be issued for AWOL.

The next day Smith and her supervisor signed a violation report, which chronicled Smith's version of the events of the last two days: that she had gone to the host site and witnessed Knox and his brother arguing, that she had instructed Knox to stay at home and call in every two hours using the nearby pay phone, that he had failed to call in, and that he had absconded.

The warrant was executed on June 22, 1999, and Knox was returned to custody. Knox had a hearing before the Prisoner Review Board, and on August 3, the Board determined that Knox had not violated his parole and that he

should find a residence that would allow him to keep in close contact with his parole agent.

Knox filed this § 1983 suit in August 2000, alleging that Smith had violated his right to be free from unreasonable seizures under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment. According to Knox, he had not violated the terms of his MSR agreement in either April or May, and both warrants were based on false information provided knowingly or recklessly by Smith. Smith asserted a qualified immunity defense and moved for summary judgment on both claims.

The district court granted Smith's motion on the April claim, but refused to grant summary judgment for the May claim, finding that there were genuine issues of material fact raised regarding whether the May 29 meeting between Smith and Knox occurred. While recognizing that Smith testified and Knox "seemingly confirmed" that she visited him on May 29 and instructed him to call in every two hours, the court observed that the May 29 AMS records, in contrast to AMS records from Smith's April visit, did not report that any meeting occurred between Smith and Knox or that she instructed him to call AMS every two hours. The court found that the absence of an AMS record suggested that Smith's testimony was not to be credited. And since the violation report stated that a warrant was issued based on Knox's failure to call in as instructed, the district court concluded that a jury could reasonably find that Smith either knowingly lied or recklessly disregarded the truth in requesting the May warrant. Further the district court concluded that Smith was not entitled to qualified immunity because it was clearly established that to request a warrant based on evidence known to be false or recklessly inaccurate would violate Knox's constitutional rights.

II. Analysis

Smith asks us to reverse the district court's denial of summary judgment on qualified immunity grounds on the May claim. She argues primarily that even if we assume that she never met with Knox or gave him any instructions on May 29, that there was still no constitutional violation because she was justified in requesting a warrant based on her reasonable conclusion from the May 29 AMS reports that Knox had absconded in violation of his MSR.

We review a district court's ruling on summary judgment *de novo*. *Dykema v. Skoumal*, 261 F.3d 701, 704 (7th Cir.2001). Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact that must be decided by a jury. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252-55, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

A. Jurisdiction

Knox first argues that we lack jurisdiction to hear this appeal because it is interlocutory. Typically, we have jurisdiction only to hear appeals from "final decisions" of district courts. 28 U.S.C. § 1291. In *Mitchell v. Forsyth*, however, the Supreme Court held that "a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment." 472 U.S. 511, 530, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985). In other words, we have jurisdiction over an appeal when the issue is simply whether, construing the disputed facts in the light most favorable to the plaintiff, the defendant violated any of the plaintiff's clearly

established constitutional rights.[6] *See Coady v. Steil*, 187 F.3d 727, 731 (7th Cir. 1999) (citing *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 977 (9th Cir. 1998)).

Smith's claim is that she is entitled to qualified immunity because, even accepting the plaintiff's version of the facts, there was no constitutional violation. Resolving Smith's claim involves the determination of whether Smith had sufficient cause to believe that Knox had violated the terms of his parole. As we recently stated, probable cause [and, by analogy, reasonable suspicion] is normally a mixed question of law and fact, but where, as here, one side concedes the other's facts as to what happened, it is a question of law. *See Smith v. Lamz*, 321 F.3d 680, 684 (7th Cir. 2003). Because the determination of Smith's entitlement to qualified immunity turns on a question of law, we have jurisdiction over this appeal. *See Mitchell*, 472 U.S. at 530.

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[6] Knox argues that we lack jurisdiction because the Supreme Court has held that a defendant may not "appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial," *Johnson v. Jones*, 515 U.S. 304, 319-20, 115 S. Ct. 2151, 132 L. Ed. 2d 238 (1995). But as we have observed, the Court's later opinion in *Behrens v. Pelletier* makes clear that "while a defendant is not entitled to immediately appeal a district court's determination that a genuine factual dispute exists about a material matter, an interlocutory appeal may properly cover a defendant's assertion that a district court's ruling that a given set of facts shows a violation of 'clearly established' law is incorrect." *Coady*, 187 F.3d at 730 (*citing Behrens*, 516 U.S. 299, 313, 116 S. Ct. 834, 133 L. Ed. 2d 773 (1996)).

B. Qualified Immunity

The qualified immunity defense is designed to protect government agents "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). To determine the availability of qualified immunity in a particular case we must engage in a two-step inquiry. The initial, threshold question is whether the facts, taken in the light most favorable to the plaintiff, show that the official's conduct violated a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001). If a constitutional right is violated, then we must determine if that right was clearly established at the time of the alleged violation. *Finsel v. Cruppenink*, 326 F.3d 903, 906 (7th Cir. 2003).

Knox claims that Smith violated his Fourth Amendment right against unreasonable seizure. Before analyzing his specific claim, however, it is important first to define what rights Knox had under the Fourth Amendment. Generally, citizens enjoy the right not to be seized or arrested absent probable cause. Knox, however, was a parolee at the time of the May seizure. The Supreme Court has made clear that parolees have a more limited liberty interest than ordinary citizens. *See Morrissey v. Brewer*, 408 U.S. 471, 480, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972)("Revocation [of parole] deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions."); *see also Faheem-El v. Klincar*, 841 F.2d 712, 720 (7th Cir. 1988) (en banc). Consequently, the seizure of a parolee requires something less than probable cause to be reasonable under the Fourth Amendment. *Cf. United States v.*

Knights, 534 U.S. 112, 121, 122 S. Ct. 587, 151 L. Ed. 2d 497 (2001) ("Although the Fourth Amendment ordinarily requires the degree of probability embodied in the term 'probable cause,' a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable.").

Significantly, in *Knights*, the Court determined that reasonable suspicion was sufficient to justify a search of a probationer's house, given the limited privacy interest of the probationer and the increased governmental interest in closely monitoring a person who is considered "more likely than the ordinary citizen to violate the law." *Id.* at 119-21 (quotation omitted). Applying these considerations to this case, we believe that Knox's Fourth Amendment rights were similarly limited as were those of the defendant in *Knights*. Accordingly, we find that a seizure of Knox based on only reasonable suspicion would satisfy the Fourth Amendment standard.

Therefore, we must determine whether the facts, taken in the light most favorable to Knox, show that Smith requested the warrant without reasonable suspicion to believe that Knox had violated his MSR. *Cf. Beauchamp v. City of Noblesville, Ind.*, 320 F.3d 733, 742 (7th Cir. 2003) (noting that where an arrest is made pursuant to a facially valid warrant, a plaintiff must show that reasonable officers would have known that the evidence relied upon to request the warrant did not establish probable cause, so that they should never have applied for warrants in the first place). Knox asserts that Smith did not have reasonable suspicion because she obtained the warrant knowingly or recklessly relying on false information. We have held in previous cases that a warrant request violates the Fourth Amendment if the requesting officer knowingly, intentionally, or with reckless disregard for the truth, makes

false statements in requesting the warrant and the false statements were necessary to the determination that a warrant should issue. *See Beauchamp*, 320 F.3d at 742-43; *Olson v. Tyler*, 771 F.2d 277, 281 (7th Cir. 1985).

According to Knox, the basis of Smith's warrant request was that he failed to call in every two hours as she had allegedly instructed him to do during their meeting on May 29. Knox claims, however, that when the evidence is viewed in the light most favorable to him, it could be reasonably inferred that Smith never visited him on May 29 and never gave him instructions to call in every two hours. Therefore, a jury could appropriately conclude that Smith either knowingly lied or recklessly disregarded the truth in requesting the warrant because she requested it based on his failure to follow an instruction that she never gave him.

The district court agreed with Knox. In reviewing the factual dispute between Knox and Smith over the events of May 29, the district court determined that the absence of an AMS report confirming that Smith visited and gave Knox call-in instructions on May 29 created a question of fact about whether Smith had lied about the visit and instructions and therefore requested the warrant on information she knew was false. The district court further found that there was no information other than Knox's failure to call in that would have given Smith sufficient cause to request a warrant.

We disagree. Even if we assume that the May 29 meeting never occurred, we find that other, undisputed evidence supported Smith's reasonable suspicion that Knox had violated his MSR by leaving his host site without authorization. In other words, the "false information" that Smith allegedly relied on in requesting the warrant was not required for the warrant to issue. *See Beauchamp*, 320 F.3d at 742.

There is no dispute that Knox was not authorized to leave his host site at the time Smith requested the warrant. He was on electronic home detention as a condition of his MSR, and he was notified of this condition before his release from custody. (Doc. 34, Ex. 11 at 54-55.) The Electronic Home Detention Rules given to him before his release explained this condition, and while he may have refused to sign these rules, two witnesses certified that Knox was informed of and understood that his release was conditioned on his participation in home detention. (Doc. 32,Ex. N.) Smith testified at her deposition that Knox was placed on electronic home monitoring upon his release in May, and that it was a violation of his MSR to leave the host site.[7] (Doc. 34, Ex. 9 at 97.)

Even Knox testified at his deposition that he was told before being released from custody in May that he had to be on electronic home detention. (Doc. 34, Ex. 11 at 55 and 76.) Finally, Knox's amended complaint claims that when he arrived at his host site on May 28, after his release, he called AMS to check-in and was instructed to stay at the host site until the electronic home monitoring bracelet was placed on his ankle. (Doc. 7, at 6, ¶ 38.)

The AMS reports of calls made to Knox's brother's phone in the morning and early afternoon of May 29 create a reasonable suspicion that Knox had absconded in violation of

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[7] At an earlier point in her deposition, Smith testified that she did not think Knox was aware that he was to be on home detention when he was released from custody in May. (Doc. 34, Ex. 9 at 83-84.) Knox, however, never makes this contention, and in fact his own testimony and the Electronic Home Detention Rules (both discussed more fully in the text) lead to the conclusion that he was aware of the home detention condition.

the home detention condition and the instructions he testified that he was given. The three AMS verification calls made on the morning of May 29 were all answered by a man who stated that Knox was next door. Of particular note, in response to the call at 11:53 a.m., the man who answered the phone stated that Knox was in another part of the house and that AMS should call back in five minutes. When AMS called back at 1:00 p.m., however, the man stated that he did not know where Knox was.

An officer in Smith's position could have reasonably concluded upon receiving the AMS call reports that there was reasonable suspicion to believe Knox had left his host site in violation of his MSR. As we recently noted, reasonable suspicion is "something less than probable cause but more than a hunch," which exists when there is some "objective manifestation" that a person is, or is about to be, engaged in prohibited activity. *United States v. Lenoir*, 318 F.3d 725, 729 (7th Cir. 2003) (quotation omitted). The significantly different information that Smith received as to Knox's whereabouts from the morning calls (he's in the other side of the house) and the 1:00 p.m. call (I don't know where he is) was an objective manifestation that Knox was there in the morning but had left the home some time between 11:53 a.m and 1:00 p.m. And the AMS records reflect that Smith, upon receiving the information from the 1:00 p.m. call, almost immediately requested a warrant for Knox based on the fact that he was AWOL.

Because undisputed facts show (i) that electronic home detention was a condition of Knox's MSR, (ii) that he was instructed not to leave his host site until hooked up to the system, and (iii) that Smith received information from AMS that Knox's whereabouts were unknown, we find that Smith had reasonable suspicion to believe Knox was AWOL. Given

this, she did not violate Knox's constitutional rights in requesting the May warrant and therefore is entitled to entitled to summary judgment. *Saucier*, 533 U.S. at 202 ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity."). Our inquiry here is at an end.

III. Conclusion

The decision of the district court denying summary judgment in favor of Smith is therefore REVERSED and the case is REMANDED with instructions to grant summary judgment in favor of Deborah Smith.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 00 C 4825

[Filed November 26, 2002]

PAUL KNOX,
Plaintiff,

v.

MARJORIE DONAHUE, et al.,
Defendants.

Milton I. Shadur, Senior United States District Judge

MEMORANDUM OPINION AND ORDER

Paul Knox ("Knox") initially filed this 42 U.S.C. § 1983 ("Section 1983") action against six Illinois Department of Corrections ("Department") employees: Parole Agent Deborah Smith ("Smith"), Community Service Department Supervisor Melvin Walker ("Walker"), Field Services Officer Sena Landreth ("Landreth"), Department Director Donald Snyder, Jr. ("Snyder"), Community Services Department Deputy Director George DeTella ("DeTella") and Department

legal counsel Kent Steinkamp ("Steinkamp"). Knox charges that he was deprived of his constitutional rights under the Fourth[1] and Fourteenth Amendments when on two separate occasions he was arrested and detained for violating the conditions of his mandatory supervised release without probable cause.

This Court's April 4, 2001 oral order held that Landreth, Steinkamp and Snyder lacked the requisite personal involvement in the alleged deprivations and dismissed Knox's claims against those defendants. That left Smith, Walker and DeTella, who have now filed a joint Fed. R. Civ. P. ("Rule") 56 summary judgment motion, pursuant to which both sides have complied with this District Court's LR 56.1.[2]

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[1] As always, this opinion adheres to the conventional and convenient (though technically imprecise) practice of referring to the underlying Bill of Rights provision (which of course imposes limitations only on the federal government) rather than to the Fourteenth Amendment (which applies to state actors and has been construed to embody such Bill of Rights guaranties).

[2] LR 56.1 is designed to facilitate the resolution of Rule 56 motions by calling for evidentiary statements and responses (in each instance with record citations), thus highlighting the existence or nonexistence of factual disputes. This opinion cites to the Smith-Walker LR 56.1(a)(3) statement as "S-W. St. ¶ --" and to Knox's LR 56.1(b)(3)(B) responsive statement of additional facts as "K. St. ¶ --." Knox's response to the S-W. St. is cited as "K. Resp. St.¶ --," although where a S-W. St. assertion is not contradicted a citation to it alone ordinarily suffices. "S-W. R. St. ¶ --" designates Smith-Walker's Reply Statement. This opinion employs the same "S-W." and "K." abbreviations in referring to the parties' exhibits and memoranda.

K. Mem. 7 n.4 says Knox has decided not to pursue his claims against DeTella because discovery has revealed that DeTella also had no personal involvement in Knox's arrests (see *Whitford v. Boglino*, 63 F.3d 527, 530-31 (7th Cir. 1995) (per curiam)). Knox's claim against DeTella is therefore also dismissed. As for the joint Smith-Walker motion, for the reasons set out here it is granted in part and denied in part.

Summary Judgment Standards

Familiar Rule 56 principles impose on parties moving for summary judgment the burden of establishing the lack of a genuine issue of material fact (*Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). For that purpose this Court must "consider the evidentiary record in the light most favorable to the non-moving party ... and draw all reasonable inferences in his favor" (*Lesch v. Crown Cork & Seal Co.*, 282 F.3d 467, 471 (7th Cir. 2002)). And *Pugh v. City of Attica*, 259 F.3d 619, 625 (7th Cir. 2001) has echoed the teaching of *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986):

> A genuine issue of triable fact exists only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

As with any summary judgment motion, this Court accepts nonmovant Knox's version of any disputed facts, but only so long as it is supported by record evidence. What follows in the Background section is culled from the parties' submissions in those terms.

Background

Over the past 20 years Knox has been in and out of Department custody for a variety of offenses, including a 1976 conviction for two counts of rape (S-W. St. ¶ 8). After Knox had completed the sentences for his earlier convictions, in 1999 he was serving a one year sentence for possession of controlled substances.[3] In the spring of 1999 plans were made to place him on mandatory supervised release (also called "parole")(*id.* ¶ 9; S-W. Ex. G)--a status that required him to remain under intensive supervision and to reside at a host site with his brother and ailing mother in Robbins, Illinois (S-W. St. ¶ 10).

On two separate occasions during the period of that parole arrangement, a warrant was issued and Knox was arrested for violating conditions of his release. Because Knox claims that both of those arrests violated his Fourth Amendment right to be free from unreasonable seizure, this opinion examines each episode and its ensuing arrest in some detail.

On April 1 Knox signed a Parole or Mandatory Release Agreement ("Agreement") that, among other conditions, required that he comply with the instructions of his parole agent (S-W. St. ¶¶ 11-12). Knox also signed a reporting instruction form stating that he was required to register as a sex offender, but he did not sign the Electronic Home Detention Rules form or the Illinois Sex Offender Registration Act form (*id.* ¶ 13). On April 2 Knox was released on parole (*id.* ¶ 21).

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[3] Because all of the operative events took place during 1999, no year designation need be included in referring to those dates.

That afternoon Smith, assigned as Knox's parole agent, met with Knox at the host site (S-W. St. ¶ 21). Because Knox was living in an apartment adjacent to his brother's apartment and did not have regular access to a telephone as required for home monitoring, Smith instructed him to call the toll free number for Automated Management Systems ("AMS")[4] from a nearby pay phone every two hours (*id.* ¶ 23). According to Smith, she also requested that he register as a sex offender and gave him a window of time within which to do so (*id.*). Knox disputes the latter, stating that Smith instructed him to remain home and gave him permission to leave only to use the pay phone to call AMS (K. St. ¶ 6).

During that host site visit Smith called AMS, and the AMS record reflects her instructions to Knox to call in. But neither the AMS record nor Smith's violation report mentions that she gave Knox permission to leave home to register (K. St. ¶ 7). Because Smith told AMS that Knox did not have access to a telephone, a technician was not sent to his home to hook up the electronic monitoring system (S-W. R. St. ¶ 14).

As recorded by AMS, Knox called in at 8:13 p.m. and 11 p.m. on April 2, but he did not check in again until 2:32 p.m. the following day (S-W. St. ¶ 25). During that morning lapse AMS paged Smith, who then requested that a warrant be

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[4] AMS is a messaging service that has contracted with Department to monitor, record and document calls from parolees and parole agents (S-W. St. ¶¶ 16-17). According to Walker's testimony, the AMS record replaced paper filings as the main record for all interactions between parole agents and parolees (S-W. Ex. D at 23). AMS was also charged with paging parole agents to notify them of problems with parolees such as a failure to check in with AMS as directed (S-W. St. ¶ 17).

issued for Knox as a parole violator (*id.* ¶¶ 26-28). Smith's violation report says that Knox committed the offense of unauthorized movement or absence, noting that he did not check in as directed and that he failed to register as a sex offender. Smith's supervisor Walker issued a parole violator warrant on April 3 (*id.* ¶ 29).

Unaware of that warrant, Knox continued to call AMS approximately every two to four hours (S-W. Ex. J) until April 9, when the warrant was executed and Knox was retaken into Department's physical custody (S-W. St. ¶¶ 29-30). On May 3 Knox was notified of the charges against him and waived his preliminary hearing (*id.* ¶¶ 31-32). After a full revocation hearing, a May 11 Prisoner Review Board order declared that Knox had violated his mandatory supervised release but ordered that plans should be made for his continued parole (*id.* ¶ 33; S-W. Ex. L).

On May 28 Knox was again released on parole to the same host site. Knox signed an Agreement with the Board that contained the same conditions as his prior release and that also specifically required him to comply with the Sexual Offender Registration Act ("Act," 730 ILCS 150/1 to 150/12) and to attend sex offender counseling (S-W. St. ¶¶ 35-39). Again Knox signed his reporting instructions requiring that he go directly to his host site and call AMS, but once more he failed to sign the Electronic Home Detention Rules (*id.* ¶ 39).

Upon arriving at his host site on the night of May 28, Knox called to check in with AMS. According to a call recorded by AMS, early the following morning a technician attempted to install the home monitoring electronic equipment at the host site, but Knox's mother and brother refused to allow the hookup because Knox would not be allowed access to that telephone (S-W. Ex. O at 25).

At 1 p.m. May 29 AMS paged Smith because Knox had not called in since the previous evening and attempts to reach him at the host site's telephone number had been rejected by Knox's brother, who said he did not know Knox's whereabouts (K. Resp. St. ¶ 46). Smith responded by asking AMS to page her supervisor to request that a warrant be issued on Knox (K. St. ¶ 19), and at 2 p.m. a warrant was issued for Knox as a parole violator (*id.* ¶ 22).

There is a disagreement as to the extent of interaction between Smith and Knox on May 29. Smith testifies that Knox was absent from the host site at the time of her initial visit on that day, but that she found him and did not report his unauthorized absence because he had not previously been notified that he would be on electronic home monitoring status (K. St. ¶ 23). Smith also states, and Knox himself seemingly confirms (S-W. R. St. ¶ 22), that she met with Knox at the host site on May 29 and told him to call AMS from the pay phone every two hours and to register as a sex offender (S-W. St. ¶ 42). Smith's violation report says that during that May 29 visit she learned that Knox would not be allowed access to a telephone and issued the alternative call-in instructions (S-W. Ex. P). Smith's report goes on to assert that Knox violated his parole because he "absconded and failed to call as instructed" (*id.*). But the AMS report for that day has no record of Smith's visit to Knox on May 29 or of any instructions that she gave him at that time about calling AMS or registering as a sex offender (K. Resp. St. ¶ 41; K. St. ¶ 22).

On June 22 the May 29 parole violation warrant for Knox was executed, and he was then arrested and returned to prison (K. St. ¶ 21). After Knox was presented with a notice of his charges and waived his right to a preliminary hearing, on August 3 the Board found that Knox had not been in violation

of his parole, and he was again released on parole (S-W. St. ¶¶ 51-53).

Section 1983 Claims

Knox contends that his arrests on both April 9 and June 22 were unreasonable seizures in violation of the Fourth Amendment and that his confinement following each arrest deprived him of his liberty without due process of law in violation of the Fourteenth Amendment. Smith and Walker move for summary judgment on several grounds, urging that:

> 1. Knox's challenge to his April 9 arrest is precluded by *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994).
>
> 2. Walker is absolutely immune from suit.
>
> 3. Both arrests were constitutional and protected by qualified immunity.
>
> 4. Knox received all of the process he was due under the Fourteenth Amendment.

Those arguments are addressed in turn.

Heck v. Humphrey

Under *Heck*, 512 U.S. at 486-87 a claim that necessarily implicates the invalidity of a plaintiff's conviction may not proceed under Section 1983 unless and until the conviction itself is invalidated. But *Heck*, *id.* at 487 n.7 expressly noted that bar would not extend to Section 1983 actions based on an allegedly unreasonable search under the Fourth Amendment

that could succeed without necessarily implying that the plaintiff's later conviction was unlawful.

In light of that *Heck* footnote, our Court of Appeals has consistently held that the requirement of a prior favorable result does not apply to a Section 1983 claim for damages resulting from an unreasonable search or seizure, because such an alleged violation of the Fourth Amendment would not necessarily impugn the validity of a conviction (see, e.g., *Copus v. City of Edgerton*, 151 F.3d 646, 648-49 (7th Cir. 1998); *Booker v. Ward*, 94 F.3d 1052, 1056-57 (7th Cir. 1996)). As *Booker*, *id.* at 1056 explained, because "one can have a successful wrongful arrest claim and still have a perfectly valid conviction," such a claim "would not necessarily undermine the validity of his conviction" (*id.*).

Knox's claim that Smith did not have a reasonable basis to issue the parole violation warrant that led to his arrest is essentially analogous to the claim of wrongful arrest without probable cause addressed in *Booker*. As in *Booker*, such a claim can proceed independently of whether the Board's ultimate determination that Knox violated his parole may stand. Unlike the authority on which Smith and Walker rely, Knox's claim falls squarely in the category of cases to which *Heck* is inapplicable (*Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 897 (7th Cir. 2001), explaining that Heck's requirement of favorable termination was "categorically" inapplicable "to all § 1983 claims for false arrest").

Walker's Absolute Immunity

Walker next argues that he is absolutely immune from suit because of his limited involvement in issuing the parole violator warrants. Although accorded only for limited

functions akin to judicial or prosecutorial acts, absolute immunity also cloaks a parole officer who is sued for "issu[ing] an arrest warrant against a parolee so long as [] he does not participate in gathering the evidence forming the basis of the warrant" (*Copus*, 151 F.3d at 649, citing *Walrath v. United States*, 35 F.3d 277, 282 (7th Cir. 1994))[5].

Here Walker performed an adjudicative function by making an independent determination to issue the warrant based on evidence provided by Smith. Although Walker was Smith's supervisor, Knox offers no evidence to show that Walker was directly involved in gathering evidence against Knox or otherwise personally investigated Knox's compliance with the conditions of his parole. Rather Walker's knowledge of the case came entirely from Smith, who prepared her report and discussed the case with Walker "in order to convince him that [Knox] had, in fact, violated his parole agreement and that a warrant should be issued" (K. St. ¶ 27). In short, Walker made a discretionary decision on the basis of information provided by Smith and is accordingly entitled to absolute immunity.[6]

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[5] Unlike the employee in *Walrath*, Walker did not sign either of Knox's arrest warrants. But it is undisputed that Walker had to approve all arrest warrants issued for parolees assigned to the parole agents that he supervised and that he had the ultimate authority for making this decision (K. St. ¶ 26). As *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993) has reconfirmed, we apply a functional approach to questions of absolute immunity, looking to "the nature of the function performed, not the identity of the actor who performed it."

[6] Even if Walker were not absolutely immune from liability, Knox has failed to show that Walker should be held liable for his role as Smith's supervisor. Under Section 1983 a supervisor is

Qualified Immunity

Both defendants next argue that their decisions to initiate Knox's arrests for violating his parole were protected by qualified immunity. Because Walker has already been insulated from suit in absolute immunity terms, what follows will focus on Smith alone.

Qualified immunity shields government officials performing discretionary functions from liability for civil damages. To overcome that defense Knox must show[7] that the officials violated "clearly established statutory or constitutional rights of which a reasonable person would have known" (*Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). *Saucier v. Katz*, 533 U.S. 194, 201-02, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)

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liable for the conduct of a subordinate that violates a plaintiff's constitutional rights only if the supervisor acted "either knowingly or with deliberate, reckless indifference" (*Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001)). But Knox provides no evidence that Walker had any direct knowledge of Knox's situation or that he had reason to suspect that Smith's report was materially false or incomplete and nevertheless willfully disregarded such a flaw.

[7] In the summary judgment context, of course, Knox's burden is only that of creating reasonable inferences, not one of proof as such (see *Anderson v. Baxter Healthcare Corp.*, 13 F.3d 1120, 1124 (7th Cir. 1994)). But any continued repetition of that burden involves an awkward locution, an awkwardness contributed to by the fact that so much of the caselaw speaks of what a party responding to a Rule 56 motion must "establish" or "prove" or "show." Whenever this opinion employs such terms, it should therefore be understood as denoting Knox's lesser burden of creating reasonable inferences, not the actual burden of persuasion.

teaches that a court conducting that inquiry must consider two questions in sequence:

> 1. whether the facts alleged, taken in the light most favorable to the injured party, show that the officer's conduct violated a constitutional right; and
>
> 2. if so, whether that right was so well established that it "would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."

To be sure, a parolee does not enjoy "the absolute liberty to which every citizen is entitled but only [a] conditional liberty properly dependent on observance of special parole restrictions" (*Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)). Because of that conditional liberty, parolees are subject to greater scrutiny by state parole officials and are not entitled to the full range of constitutional protections afforded to criminal defendants (see *Faheem-El v. Klincar*, 841 F.2d 712, 720 (7th Cir. 1988)(en banc)). But it is also clear that a parolee retains at least some Fourth Amendment protection from unreasonable searches and seizures (*Griffin v. Wisconsin*, 483 U.S. 868, 873, 97 L. Ed. 2d 709, 107 S. Ct. 3164 (1987), holding that the search of a probationer's home was subject to review under the Fourth Amendment's reasonableness standard).[8]

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[8] Arguably parolees may be entitled to even less protection than probationers (see *United States v. Cardona*, 903 F.2d 60, 63 (1st Cir. 1990)). Even so, parolees like probationers retain a status of conditional liberty warranting at least some Fourth Amendment protection (*see Griffin*, 483 U.S. at 874).

Despite Knox's status as a parolee, then, the Fourth Amendment applies to each of his arrests, mandating consideration of whether these seizures were reasonable. For each incident Knox argues that Smith did not have a reasonable basis to conclude that he had violated his parole when she requested the warrant leading to his arrest, because she did not give him a reasonable opportunity to comply with his parole requirements and she failed to follow established procedures.

In reliance on the reasoning in *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), our Court of Appeals has held that a police officer is liable under Section 1983 for violating the Fourth Amendment if he seeks an arrest warrant (1) solely on the basis of "statements he knew to be false or would have known were false had he not recklessly disregarded the truth" (*Olson v. Tyler*, 771 F.2d 277, 281 (7th Cir. 1985)) or (2) "through the intentional or reckless omission of material facts" that would negate probable cause (*id.* at 281 n.5; *see also Olson v. Tyler,* 825 F.2d 1116, 1118 (7th Cir. 1987)).[9] To analogize Olson to this case,[10] Knox must raise a reasonable inference that Smith acted unreasonably by either knowingly or recklessly disregarding the truth when she requested the warrants that

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[9] All further references to *Olson* in this opinion are to the 1985 decision cited in the text.

[10] While *Olson* dealt with a police officer's affidavit submitted to seek a criminal arrest warrant, the parole agent who files a violation report and seeks a parole violator warrant is in an analogous position for current purposes. Certainly a parole agent enjoys no more freedom than a police officer to lie knowingly, or willfully to ignore the truth, in her efforts to persuade the decisionmaker to issue a warrant.

led to Knox's arrests for violating his parole. This opinion turns to the circumstances of each arrest in those terms.

As to the April 9 arrest, it has already been stated that on April 3 (a day after Knox's release) Smith had filed a violation report and had asked that a warrant be issued because Knox had failed to call in according to her instructions and because he had not registered as a sex offender. Knox does not dispute that Smith had instructed him to call AMS every two hours or that he failed to do so on the morning of April 3. Additionally, the AMS report for that period is uncontroverted evidence of both her instructions and his infraction.

Knox contends instead that Smith failed to follow the required procedures in implementing the conditions of his parole. But that assertion is not supported by the evidence. Although Smith did not communicate with the Placement Resource Unit when she realized that Knox would not have access to a telephone, she did not issue a warrant on that basis but instead established an alternative procedure for calling in that was neither unfair nor unreasonable.

Knox also argues that he did not have a reasonable opportunity to comply with the conditions of his parole. Though his evidence on that point is somewhat more persuasive, it too cannot rescue his claim. In particular, Knox asserts that he was not given a real opportunity to register as a sex offender.[11] Disputing Smith's testimony that she gave

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[11] Alternatively, Knox argues that the registration condition was itself invalid because the Act was not constitutionally applied to him. According to his complaint, Knox had fully completed his sentence for his 1976 rape convictions by 1996, when the Act as it

him permission to register as a sex offender, Knox states that Smith instructed him to leave his house on April 3 *only* for the purpose of calling AMS. In addition, the AMS record that documents her instructions about calling AMS contains no mention of her directions for registering.

That being the case, Knox's version must be credited--and that in turn may create a reasonable inference that Smith's request for the warrant on the basis of Knox's failure to register was deliberately or recklessly unfounded. But that would not be enough to save his claim under *Olson*, because Smith had the requisite probable cause to request the warrant based on his failure to comply with her AMS instructions. Even if Knox could not possibly have registered before the warrant was issued, that does not undo the fact that he had separately violated his parole by failing to call in as directed.

To be sure, Knox's failure to call on the morning of April 3 is a relatively minor and somewhat technical infraction. But under Illinois law (see 730 ILCS 5/3-3-7(a)(15)) Knox's April mandatory release agreement required that he comply with the

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would apply to him was adopted. In that respect *People v. Malchow*, 193 Ill. 2d 413, 739 N.E.2d 433, 250 Ill. Dec. 670 (2000) has upheld the Act as constitutional because its registration requirements do not constitute additional punishment, so that its provisions can be applied retroactively. In terms of the United States Constitution, however, our Court of Appeals has not spoken to the issue, while the United States Supreme Court now has the validity of Alaska's similar statute before it (*Smith v. Doe*, Dkt. No. 01-729, argued Nov. 13, 2002, on cert. from *Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001)). Under the circumstances, this Court will eschew any decision on the subject, for as explained in the text, Smith had sufficient independent grounds on April 3 to request a warrant based on Knox's failure to comply with her instructions.

instructions of his parole agent as a condition of his release. Moreover, Walker testified that parole agents are authorized to request, and that he is authorized to issue, warrants for any technical violation (S-W. R. St. ¶ 15). Thus Knox's admitted failure to comply with Smith's instructions was a reasonable basis for Smith to seek a parole violator warrant, and the resulting April 9 arrest was not an unreasonable seizure in violation of the Fourth Amendment.

But as the Background section of this opinion has indicated, the circumstances that led to Knox's second challenged parole violation arrest on June 22 are less clear. Fifteen hours after Knox first arrived at his host site and checked in with AMS at 10:26 p.m. on May 28, Smith had AMS page her supervisor to request a parole violation warrant. According to Smith's violation report, she requested the warrant because Knox had failed to comply with her May 29 instructions to call AMS every two hours from a pay phone.

Knox urges that Smith knowingly or recklessly disregarded the truth in her May 29 report recommending his arrest. He asserts that she had no reasonable basis for seeking the warrant because she did not give him an adequate opportunity to comply with the conditions of his parole and she failed to follow the required parole procedures. Knox supports that position with two arguments. First, he asserts that a genuine issue of material fact exists as to whether Smith visited Knox on May 29. Second, he disputes that Knox's failure to call AMS per her instructions was the reason that Smith requested the May 29 warrant.

To be sure, Smith testified that she visited Knox on May 29 and instructed him to call in to AMS bi-hourly. Her violation report conforms to that account and lists Knox's

failure to comply as the basis for requesting the warrant. Moreover, although Knox's testimony reflects considerable confusion over the circumstances and conditions attending each of the many times he has been on parole, he does state in places that Smith visited him after he was released on May 28 and required him to call in every two hours.[12]

Against that evidence, Knox points out that, in contrast to the April visit (S-W. Ex. J at 4-5), the later AMS report does not state that Smith visited Knox on May 29, nor does it contain any mention of her instructions to call in every two hours. That report does reflect, however, that at 1:14 p.m. on May 29 Smith responded to an AMS page advising her that Knox's host had been rude and belligerent. And Smith stated on that record that Knox should not have been released to that host site and that this was the second time it happened, so she requested that a warrant be issued (S-W. Ex. O at 27).

It is uncontested that the AMS report provides key documentation of a parolee's case and is supposed to reflect all activity pertaining to a parolee, including visits from the agent. Walker testified that "AMS records everything that happens in the case" and that "when people involved in a specific case had information ... about the case, they had instructions to call it in to AMS" (S-W. Ex. D at 23).

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[12] Knox's testimony on these points is far from definite. Discussing his May release, he said he believed that Smith visited him on the day he was released (S-W. Ex. B at 57). Although that was true for his April 2 release, Smith allegedly visited him the day *after* he was released in May. Knox is also confused about whether at that time he was told to call in to AMS or was supposed to report in person to his parole agent (*id.* at 61-63).

At a minimum, then, the absence of an AMS record creates a reasonable inference that Smith's testimony (1) about visiting with Knox and (2) about the additional conditions of his parole that she assertedly put into effect and then charged him with violating is not to be credited. Moreover, the existing AMS report suggests that Smith's request for the warrant was based not on Knox's failure to call in according to those claimed instructions or any other alleged non-compliance, but rather on the difficulty in finding an appropriate placement for him.

When all reasonable inferences are combined and drawn in Knox's favor, it cannot be said as a matter of law that a reasonable jury would go awry in concluding that Smith's misconduct was deliberate--that she either knowingly lied or recklessly disregarded the truth in her violation report (as to that standard, *see*, *e.g.*, the reading of *Olson* in *Senger v. Jordan*, 1989 U.S. Dist. LEXIS 3886, No. 85 C 6493, 1989 WL 36225, at *4 (N.D. Ill. April 10)). Smith's report contains no information other than Knox's failure to call in that would constitute sufficient cause for the parole violation warrant. In sum, under *Olson* Knox has raised a reasonable inference that Smith did not have a reasonable basis for requesting the warrant, so that his later arrest on June 22 violated his Fourth Amendment right against unreasonable seizure.

That leads to the second question posed by *Saucier*: whether Smith is entitled to qualified immunity for her actions. On that score *Olson*, 771 F.2d at 281 (citations to *Franks*, 438 U.S. at 164-65 omitted) calls for a "no" answer:

> It is clearly established that the fourth amendment requires a truthful factual showing sufficient to constitute probable cause ... An officer's conduct in

> preparing a warrant affidavit that contains only inaccurate statements that are untruthful as that term is defined in *Franks* violates the arrestee's fourth amendment rights. In such a case, a reasonably well-trained police officer would have known that the arrest was illegal.

That Smith was a parole agent filing a violation report, rather than a police office submitting an affidavit, makes no difference (see *Scotto v. Almenas*, 143 F.3d 105, 113 (2d Cir. 1998); *Giarrusso v. City of Chicago*, 539 F. Supp. 690, 696 (N.D. Ill. 1982); *Senger*, 1989 U.S. Dist. LEXIS 3886, 1989 WL 36225, at *4). No reasonable parole officer could disagree that it is unlawful to request a parole violation warrant based on evidence that is known to be false or recklessly inaccurate.

Due Process Claim

Lastly, Knox's claim that his arrests violated his right to fundamental fairness under the Fourteenth Amendment's Due Process Clause can be disposed of in short order. *Morrissey*, 408 U.S. at 485-89 established that due process in the parole revocation context is satisfied when a parolee is notified of the charges against him and is afforded a preliminary hearing to determine probable cause and a full hearing to determine actual revocation. Illinois' parole revocation process (730 ILCS 5/3-3-9) complies with that framework, and it is undisputed that for both of his arrests Knox was afforded the two hearings and received all of the process that he was due. Hence his claim under the Due Process Clause cannot survive summary judgment.

Conclusions

Walker's acts in issuing the parole violation warrants are entitled to absolute immunity from Knox's Section 1983 suit. Walker's motion for summary judgment is therefore granted, and Knox's Fourth Amendment claims against him are dismissed.

Although Knox's challenge to the April 9 arrest is not barred by Heck v. Humphrey, he has failed to raise a material (that is, outcome-determinative) issue of fact about Smith's April 3 request for the warrant. Thus Smith's motion for summary judgment is granted as to the April 9 arrest.

In contrast, the absence of a record of Smith's contact with Knox during his May release does raise a question of material fact as to the accuracy of Smith's May 29 violation report. Because a reasonable jury could infer that she lacked sufficient cause to procure the warrant and that she accordingly caused Knox to be arrested in violation of the Fourth Amendment, Smith's motion for summary judgment is denied as to Knox's claim of unreasonable seizure based on the June 22 arrest.

Lastly, Knox has failed to show a genuine issue of material fact that he was denied his due process rights under the Fourteenth Amendment. Both Smith and Walker are entitled to judgment as a matter of law on that claim.

One final matter bears mention, though (or perhaps because) it has not been addressed by the litigants). No view is expressed here as to the appropriateness or inappropriateness of any Rule 54(b) determination as to any claim that has been resolved as a final matter by this opinion.

/s/ _____
Milton I. Shadur
Senior United States District Judge

Date: November 25, 2002

APPENDIX D

ILLINOIS DEPARTMENT OF CORRECTIONS PAROLE AGREEMENTS

State of Illinois
Department of Corrections

ELECTRONIC HOME DETENTION RULES

I, Paul Knox (A71628), hereby agree to comply with the rules and regulations of Electronic Home Detention.

I shall remain within the interior premises or within the property boundaries of my residence at all times during the hours designated by the Illinois Department of Corrections.

I shall admit any person or agent designated by the Illinois Department of Corrections into my residence at any time for proposes of verifying my compliance with the conditions of my detention.

I shall make necessary arrangements to allow for any person or agent designated by the Illinois Department of Corrections to visit my place of education or employment at any time, based upon the approval of the educational institution, employer, or both, for the purpose of verifying my compliance with the conditions of my detention.

I shall acknowledge and participate with the approved electronic monitoring device provider as designated by the Illinois department of Corrections at any time for the purpose

of verifying my compliance with the conditions of my detention.

I shall maintain the following:

(1) a working telephone in my home;
(2) a monitoring device in my home, or on my person, or both; and
(3) a monitoring device in my home or on my person in the absence of a telephone.

I shall obtain approval from the Illinois Department of Corrections before changing any term or condition of Electronic Home Detention.

I shall not commit another crime while subject to Electronic Home Detention as a condition of Mandatory Supervised Release.

I am aware that violating the terms of Electronic Home Detention may subject me to prosecution for the crimes of Escape or Violation of Parole/Mandatory Supervised Release.

I will abide by other conditions set forth by the Illinois Department of Corrections.

I have read and understand all of the rules of the Electronic Home Detention Program.

_____ _____

Participant's Signature Date

_____ _____

Witness Date

We certify that today Paul Knox was placed on parole or Mandatory Supervised Release with Electronic Home Detention as a condition. The above-named inmate refused to sign this form in violation of 730 ILCS 5/5-8a-5(A). In light of the inmate's refusal, the Electronic Home Detention Rules were explained to, and to the best of our knowledge, understood by the inmate.

/s/_____ 5/26/99
Witness Date

/s/_____ 5/26/99
Witness Date

ILLINOIS DEPARTMENT OF CORRECTIONS

REPORTING INSTRUCTIONS

Knox, Paul (Releasee)

Shawnee (Facility)

A71628 (Doc Institution Number)

02/24/2000 (Release Date)

Our Records Indicate for Release Plan Is as Follows:

Host Site/home: Faye Knox Mother
14012 Claire Blvd.
Robbins, IL 60472
000-000-0000

Assigned Community Services Office:

SIS - Cook South
Agent: Smith, Deborah
Telephone Number: 800-666-6744

Reporting Instructions: Upon release, you must go directly to the above residence. Upon arrival at your host site/home, you must call the phone number listed above immediately. You must give the answering service operator your name, doc institution number, your host site/home address and telephone number.

Sex Offender Registry Reqd: Yes 09/03/1993 09/03/2003

/s/_____ 5-26-99
(Field Services Representative) (Date)

I understand and will comply with the above instructions.

/s/_____ 5-26-99
(Releasee Signature) (Date)

cc: Releasee (Original)
Institution
Community Services Office

STATE OF ILLINOIS
PRISONER REVIEW BOARD
PAROLE OR MANDATORY SUPERVISED RELEASE AGREEMENT

Name: Paul Knox
Institution: Shawnee
Number: A71628

This document constitutes an agreement governing persons who have been granted parole by the Illinois Prisoner Review Board, otherwise released under supervision, and defines the terms by which the undersigned is conditionally released from confinement. The rules of conduct follow. If such rules are violated, parole or mandatory supervised release may be revoked under the rules and regulations promulgated by the Prisoner Review Board.

RULES GOVERNING ADULT PAROLEES AND MANDATORY SUPERVISED RELEASES

Until final discharge, you shall at all times be under the legal custody of the Department of Corrections, subject to being retaken at any time, with the establishment of probable cause and with the lodging of a warrant, within the enclosure of an Illinois State Correctional Center.

You are obligated to comply with all rules, regulations, orders, and subsequent amendments thereto of the Prisoner Review Board and of the Community Services Division of the Department of Corrections.

1. You must comply with the instructions of your Department of Corrections Agent, including any instructions to submit to electronic monitoring, (if paroled or released out

of State, obedience of the rules of both states is required) and the following Board Special Orders:

Comply with the guidelines of the Sex Offender Registration Act. Attend Sex Offender Counseling program.

2. You must obey all municipal, county, state, and federal laws and ordinances.

3. You must have prior approval from your assigned Community Services Zone Supervisor for the following:

a) Requests to leave the State;
b) Requests to visit or write to Correctional Center residents;
c) Changes in residence or employment.

4. All arrests must be reported immediately to your assigned Community Services Zone Supervisor.

5. Status reports must be submitted as directed.

6. You shall not own, possess, use, sell, or have under your control any firearms or otherwise dangerous weapons.

7. You may be required to submit to electronic monitoring as authorized by the Board.

I, Paul Knox, committed to and under the custody of the Illinois Department of Corrections, do hereby acknowledge that I have carefully read or have had read to me and do clearly understand the contents and conditions of the above rules governing the conduct of adult parolees and mandatory supervised releasees, and I do hereby agree to comply with

same. I do further agree that I should be charged with violation of my Illinois parole or release, and should I be in another state, I do hereby waive my extradition and I do no resist being returned to an Illinois state correctional center.

I also understand that if I am being release pursuant to 730 ILCS 5/3-3-10, this agreement as herein stated is applicable to me.

Signed this 26 day of May, 1999.

/s/_____ /s/_____

Parolee or Mandatory Supervised Releasee

Witness